



## NEW MEXICO ENVIRONMENT DEPARTMENT

### Office of the Secretary

#### POLICY 07-13

<b>SUBJECT:</b>	Public Participation
<b>PURPOSE:</b>	To provide guidance and direction for the proper and appropriate public participation opportunities related to New Mexico Environment Department ("NMED" or the "Department") activities (e.g., permitting, corrective action) and proceedings. This policy is in addition to any applicable procedures required by State statute or regulation.
<b>POLICY:</b>	NMED shall provide proper and appropriate public participation opportunities related to NMED's actions and proceedings.
<b>REVISIONS:</b>	New Policy.
<b>APPLICABILITY:</b>	All NMED programs and employees shall comply with this policy.
<b>REFERENCES:</b>	United States Environmental Protection Agency ("EPA"), EJSCREEN website ( <a href="http://www.epa.gov/ejscreen">www.epa.gov/ejscreen</a> ); New York State Department of Environmental Conservation ("NYSDEC") DEC Policy, CP-29 <i>Environmental Justice and Permitting</i> (March 9, 2003); NYSDEC <i>Tips for Preparing a Public Participation Plan</i> ; EPA Office of Environmental Justice ("OEJ"), <i>The Model Plan for Public Participation</i> , Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council (November 1996). 40 C.F.R. Parts 5 and 7; Title VI of the Civil Rights Act of 1964; and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500; Public Participation Guidance for EPA Assistance Recipients: <a href="https://www.gpo.gov/fdsys/pkg/FR-2006-03-21/pdf/06-2691.pdf">https://www.gpo.gov/fdsys/pkg/FR-2006-03-21/pdf/06-2691.pdf</a> ; EPA Limited English Proficiency Guidance: <a href="https://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf">https://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf</a> .
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APPROVAL: Butch Tongate DATE: 2/6/18  
Butch Tongate  
Cabinet Secretary

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### 1. SUMMARY

This policy provides guidance for ensuring that public participation opportunities related to NMED activities and proceedings are adequate based upon the specific circumstances and are in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § § 2000d to 2000d-7 and the EPA regulations at 40 C.F.R. Parts 5 and 7. The policy is written to assist NMED staff, the regulated community and the public in understanding requirements related to public participation.

This policy will support the involvement of all people in NMED's activities and proceedings by further educating NMED staff on the topics of federal civil rights requirements, environmental justice and public participation; by providing opportunities for public participation above and beyond NMED's statutorily mandated public participation requirements; by highlighting the provision of adequate public access to NMED permitting information; and by further incorporating federal civil rights and environmental justice concerns into NMED's permitting and other associated processes.

### 2. DEFINITIONS

For purposes of this policy, the following definitions shall apply.

A. **Census block group** means a unit for the U.S. Census used for reporting. Census block groups generally contain between 250 and 500 housing units.

B. **Environmental justice** means the fair treatment and meaningful involvement of all people regardless of race, color, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

C. **Limited-English Proficient ("LEP") individual** means an individual who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English, and whom therefore may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

D. **Low-income community** means a census block group, or contiguous area with multiple census block groups, having a low-income population equal to or greater than 23.59% of the total population.

E. **Low-income population** means a population having an annual income that is less than the poverty threshold. For purposes of this policy, poverty thresholds are established by the U.S. Census Bureau.

F. **Minority community** means a census block group, or contiguous area with multiple census block groups, having a minority population equal to or greater than 51.1% in an urban area and 33.8% in a rural area of the total population.

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G. **Minority population** means a population that is identified or recognized by the U.S. Census Bureau as Hispanic, African-American or Black, Asian and Pacific Islander or American Indian.

H. **Person with Disabilities** means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment.

I. **Potential environmental justice area** means a minority or low-income community that may bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

J. **Rural area** means territory, population, and housing units that are not classified as an urban area. See definition for 'urban area' below. For purposes of this policy, rural area classifications are established by the U.S. Census Bureau.

K. **Urban area** means all territory, population, and housing units located in urbanized areas and in places of 2,500 or more inhabitants outside of an urbanized area. An urbanized area is a continuously built-up area with a population of 50,000 or more. For purposes of this policy, urban area classifications are established by the U.S. Census Bureau.

### **3. PRELIMINARY SCREENING**

In an effort to ensure the proper enhancement of public outreach, NMED Bureaus must perform a preliminary screening to identify areas/populations for which additional consideration, analysis or outreach is necessary. EPA's "EJSCREEN" is an environmental justice mapping and screening tool that provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN allows users to access high-resolution environmental and demographic information for locations in the United States, and compare their selected locations to the rest of the state, EPA region, or the nation. The tool shall be used to help with preliminary determinations about whether or not minority and/or low-income populations are potentially impacted by the Department's activity or proceeding, whether there are existing environmental issues or to identify whether there is a combination of environmental and demographic indicators that is greater than usual.

#### **A. Methodology for Preliminary Screening**

Each Bureau shall conduct a preliminary screening using the EPA EJSCREEN tool for facility locations where public participation is required for the specific activity (e.g., permitting) or proceeding. The EJSCREEN report that provides the most advantageous information is the 2011-2015 ACS (American Community Survey) Report. Please see Attachment 1 for the User Guide for EJSCREEN 2016 (or as updated) for instructions on how to conduct preliminary screenings. Unless otherwise indicated (e.g., if it is determined that the default radius is impractical), Bureaus shall use the following parameters as a starting point for the preliminary screening:

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- a. Number of households within a four (4) mile radius<sup>1</sup> (set as a “buffer” in EJSCREEN) from the geographic center of the facility or proposed facility;
- b. The per capita income for the population within a four (4) mile radius compared to the per capita income for the U.S.;
- c. Percent of minority population and percent of population by race within a four (4) mile radius;
- d. The percent of Linguistically Isolated Households (a demographic indicator in EJSCREEN) by language for the population within a four (4) mile radius; and,
- e. The percent or population within a four (4) mile radius by ability to speak English.

If a Bureau determines that it requires additional information after analyzing the EJSCREEN results, the Bureau may seek out additional data sources such as the U.S. Census Bureau website, or NMED’s EJ Mapping Tool.<sup>2</sup> Please note that in some instances, after consultation with the appropriate Bureau Chief and Division Director, enhanced public outreach may be required regardless of the results of the preliminary screening. Because of New Mexico’s vast and varied topography and populations, the above parameters are subject to revision, as the EJSCREEN 2016 tool reveals its effectiveness through implementation in the state.

### B. Results of Preliminary Screening

Upon compiling the results of the preliminary screening, such results will be used, and included in, a Public Involvement Plan (PIP), which will be mandatory for each NMED activity requiring public participation. It is recommended that the EJSCREEN report produced during the preliminary screening be directly included in the PIP. If the results indicate that language services will be necessary due to Limited English Proficient populations, the requirements of NMED’s Limited-English Proficiency Policy (07-11) shall be incorporated into the required PIP.

### **4. DEVELOPMENT OF PUBLIC INVOLVEMENT PLAN (PIP)**

Each Bureau shall develop a PIP for each activity requiring public participation (e.g., permitting actions, water quality surveys, rulemakings, etc.). A PIP template can be found as Attachment 2 to this policy. Each Bureau shall follow its own statutory or regulatory public notice requirement(s). If statutory or regulatory requirements for a particular activity would make a PIP impractical (e.g., a quick approval timeframe, such as air quality relocation applications), then Bureaus should note in writing such special circumstances. In such instances where a PIP is deemed to be impractical due to statutory or regulatory requirements, the four factor LEP assessment should still be completed, and documented in writing, and the extent to which LEP services are necessary for the activity should be determined.<sup>3</sup> The PIP

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<sup>1</sup> If an activity or proceeding is related to a facility that is located in an urban area, or is proposed to be located in an urban area, it may be more representative of the community to be captured if a one (1) mile radius is applied.

<sup>2</sup> <https://www.census.gov/>; <https://gis.web.env.nm.gov/oem/?map=ejmt>

<sup>3</sup> See NMED LEP Policy and Procedure 07-11, Sections 3.0-6.0.

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shall be made available online and in hardcopy in an easily accessible location in the community analyzed. In addition to the required content, the PIP will include NMED contact information so that community members, members of the public, interested parties and regulated entities can provide comments on the PIP. Such comments will be reviewed by Bureau staff and appropriate amendments to the PIP will be made as necessary. Every PIP shall be reviewed and approved by the appropriate Bureau Chief before issuance. The PIP is a “living” document and can be amended, if deemed necessary, by the implementing Bureau. For example, the PIP could be amended based upon feedback from the public or if the Bureau identifies a problem in executing the PIP.

The PIP shall include, at a minimum, the following elements<sup>4</sup>:

- a. An overview of the Bureau’s plan of action for addressing the community's needs and concerns;
- b. A description of the community/stakeholder groups (including demographics, history, and background). This section should include the results of the preliminary screening per Section 4 above;
- c. A contact list of Bureau staff with phone numbers and email addresses to allow the public to communicate with the Bureau via phone or email;
- d. A detailed plan of action (outreach activities) the Bureau will take to reach the affected public. Examples include: posting locations of information, informational meetings and availability of information (e.g., online, hard copies);
- e. A contingency plan for unexpected events (e.g., power outage at a meeting location or inclement weather);
- f. Location(s) where public meetings will be held, if appropriate. Consideration should be given to availability and schedules of public transportation as well as state and federal holidays (e.g., Christmas, Thanksgiving, New Years, 4<sup>th</sup> of July);
- g. Contact information (i.e., the NMED Non-Discrimination Coordinator) for obtaining language assistance services for LEP persons, including, translation of documents and/or interpreters for meetings and for obtaining services for persons with disabilities;
- h. In many cases, formal notification in local newspapers and on the radio is mandatory pursuant to statutory and regulatory requirements. The PIP shall identify in which periodicals, and in which sections (e.g., Legal, Classified,

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<sup>4</sup> See Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14,207, 14,211 (March 21, 2006).



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Display), Public Notices will be posted as well as which radio stations will be used.

If a LEP community is identified through the preliminary screening, the Bureau must attempt to use a periodical and/or radio station capable of using the same language. For example, if a LEP community is identified where the primary language is Spanish, the Bureau must attempt to utilize a Spanish-only newspaper or radio station to publish and broadcast the Public Notice.

- i. Location of the information repository (physical address or web address, as applicable), if appropriate.

Additional requirements may be identified as part of the Limited-English Proficiency Policy (07-11) and/or the Non-Employee Disability Accessibility and Outreach Policy (07-10). Such requirements shall be incorporated into the PIP.

## **5. TRAINING**

All NMED employees shall be required to attend training on this policy. Such training shall occur no later than 120 days after the first signing of this policy. Subsequent trainings will occur at regular intervals, as determined by the NMED's Non-Discrimination Coordinator, including:

- a. When substantive changes are made to the policy;
- b. When new employees begin employment with NMED; and
- c. At three year intervals for all NMED employees.

Such training shall be provided by the Non-Discrimination Coordinator and the Office of General Counsel.

## **6. DISCIPLINE**

Any employee who fails to comply in good faith with the terms and provisions of this policy may face disciplinary consequences up to and including dismissal (Please see NMED Policy 02-71, Disciplinary Action).